

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. STATE REAL ESTATE DEPARTMENT

[R05-134]

PREAMBLE

- 1. Section Affected**
R4-28-1103
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 32-2107(E)
Implementing statutes: A.R.S. §§ 32-2108; 32-2121(A)(8), (9), and (10); 32-2122; 32-2125; 32-2151; 32-2151.01; 32-2153(A)(21); 32-2155(A)
- 3. The effective date of the rules:**
June 4, 2005
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 11 A.A.R. 106, January 3, 2005
Notice of Proposed Rulemaking: 11 A.A.R. 4, January 3, 2005
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Cindy Wilkinson, Rules Liaison
Address: Arizona Department of Real Estate
2910 N. 44th St., 1st Floor
Phoenix, AZ 85018
Telephone: (602) 468-1414, ext. 120
Fax: (602) 468-0562
E-mail: cwilkinson@re.state.az.us
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**
This rulemaking is to include an exemption for very small brokerages from the requirement of having a written policy and procedure manual.
R4-28-1103 requires that the designated broker acting for each employing broker demonstrate reasonable supervision and control over licensed and unlicensed employees by establishing and enforcing written policies, procedures and systems ("Broker Policy Manual"). Following adoption of the requirement for a Broker Policy Manual in August 2002, the Real Estate Commissioner appointed a committee to prepare a Broker Office Policy Model Manual ("Model Manual") as an example for brokers' use in complying with the then-new requirement.
During the August 2002 rulemaking and since, the Department has received informal criticisms from time-to-time that the requirement was excessive when applied to brokers running a one-person office, or who only have one or two employees. The Department consequently considered an exemption to the requirement. For the purposes of this rulemaking, the Department has defined a Small Brokerage as one with a single office location that employs no more than two licensees (including the designated broker) and no more than one unlicensed person. According to Department licensing records, as of February 7, 2005, 3,488 out of approximately 8,363 employing brokers had no more than two licensed employees, including the designated broker (the Department does not record the number of unlicensed employees at a brokerage firm). When the designated broker submits the Broker Audit and Control Declaration on behalf of the employing broker, or the Department audits the employing broker, the broker must meet the

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criteria for the exemption or demonstrate compliance with the rule by producing the Broker Policy Manual for the brokerage.

Although no written comments were received during the comment period, a suggested alternative to this exemption was to have the designated broker simply adopt for use the Model Manual, subject to specific, enumerated changes. Since the Department believes that a broker currently has this option, no change to R4-28-1103 would be required. However, the Model Manual is 46 pages, and the list of exceptions or changes would likely prove to be extensive. The Department does not believe this would lessen the burden on small brokerages.

7. **A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not review any study relevant to the rules.

8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

9. **The summary of the economic, small business, and consumer impact:**

This rulemaking directly affects real estate, cemetery, and membership camping brokers. No additional cost on regulated parties, the Department, or other persons is expected as a result of this rulemaking.

Cost/Benefit Analysis

Probable costs and benefits to the Department and other Agencies directly affected by the proposed rulemaking:

The Department does not expect to incur costs or receive benefits from this rulemaking. The small brokerage firms that meet the criteria will be exempt from establishing and enforcing written policies, procedures and guidelines, but are still required to supervise licensed and unlicensed persons in the broker's employ. According to Department records, as of the first of February 2005, there were 8,363 employing brokers (2,567 corporations, 1,540 limited liability companies, 70 partnerships and 4,186 self-employed), of which 3,488 have no more than two licensed employees (including the designated broker).

Probable costs and benefits to a political subdivision of Arizona directly affected by the proposed rulemaking:

None

Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:

Although it relieves qualifying small brokerage firms from undertaking to comply with the requirement, minimal costs and benefits, if any, are expected as a result of the change. This is because the Model Manual is and has been available for use as a comprehensive guideline, and the broker is still responsible for supervising employees and ensuring compliance with laws.

General Description of the Probable Impact on Private and Public Employment in Businesses, Agencies and Political Subdivisions of this State directly affected by the Proposed Rulemaking:

No impact is expected as a result of the changes.

A Statement Of The Probable Impact Of The Proposed Rulemaking On Small Businesses:

- a) **Identification of the small businesses subject to the proposed rulemaking:**
Small brokerages are subject to the rulemaking, but no adverse impact is expected as a result of the change.
- b) **Administrative and Other Costs Required for Compliance with the Proposed Rulemaking:**
None is expected.
- c) **A description of the methods that the agency may use to reduce the impact on small businesses:**
None. The whole rulemaking is for the purpose of reducing impact on small businesses.
- d) **The Probable Cost and Benefit to Private Persons and Consumers who are Directly Affected by the Proposed Rulemaking:**
None is expected. Designated brokers of small and large brokerage firms still have an obligation to reasonably supervise the licensed and unlicensed persons employed by their employing brokers, and to otherwise comply with the real estate laws.

The Probable Effect on State Revenues

None is expected.

A Description of any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rulemaking:

None

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Limitations on Data

None

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The rule was clarified to reflect that the small brokerages to which the exemption applies maintain a single office and not multiple locations. Although unable to quantify brokers with no more than two licensed employees and who maintain multiple office locations, based on its experience the Department believes there are few. The brokers who requested this exemption each maintain only one office location. The subsection was renumbered from (C) to (G) due to an intervening rulemaking in which sections were added to R4-28-1103. At G.R.R.C. staff's suggestion, subsection (B) was amended for clarity to distinguish when the Department meant the employing broker and when it meant the designated broker. Minor technical and grammatical changes were also made.

11. A summary of the comments made regarding the rule and the agency response to them:

None

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. STATE REAL ESTATE DEPARTMENT

ARTICLE 11. PROFESSIONAL CONDUCT

Section

R4-28-1103. Broker Supervision and Control

ARTICLE 11. PROFESSIONAL CONDUCT

R4-28-1103. Broker Supervision and Control

A. No change

1. No change

a. No change

b. No change

2. No change

a. No change

b. No change

c. No change

3. No change

4. No change

5. No change

B. A designated broker shall establish a system for monitoring compliance with statutes, rules, and the employing broker's policies, procedures, and systems.

C. No change

D. No change

E. No change

F. No change

G. If an employing broker maintains one office and employs a designated broker, no more than one other licensed person, and no more than one unlicensed person, the employing broker and designated broker are not required to develop and maintain written policies, procedures, and systems as described in subsection (A).